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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VACATIONAL BIKE RENTALS,
LLC, a limited liability company,

Plaintiff,

vs.

KITZUMA CORPORATION, A
CORPORATION, DBA KITZUMA
CYCLING LOGISTICS;
GETCARRIER, LLC, A LIMITED
LIABILITY COMPANY; SPEED
EXPRESS, INC., A CORPORATION;
EMPIRE NATIONAL, INC., A
CORPORATION,

Defendants.

Case No.: 2:24-cv-07105 CAS

**DEFENDANT EMPIRE
NATIONAL, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ITS MOTION TO DISMISS THE
COMPLAINT PURSUANT TO
RULE 12(B)(6)**

Hearing Date: Monday, November 18,
2024, at 10:00 am

Judge Christina A. Snyder

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1 Plaintiff's four causes of action against Empire—(1) Negligence, (2) Quantum
2 Meruit, (3) Unjust Enrichment, and (4) Conversion—should be dismissed under Fed.
3 R. Civ. P. 12(b)(6) for failure to state a claim. Each of these state law claims against
4 Empire National, Inc. ("Empire") arises from Plaintiff's allegation that its cargo was
5 lost or damaged during interstate transport from North Carolina to California. The
6 Carmack Amendment is Plaintiff's exclusive remedy for loss or damage to cargo
7 during interstate transportation. Additionally, the Carmack Amendment (49 U.S.C. §
8 14706) and the Federal Aviation Administration Authorization Act (49 U.S.C. §
9 14501) ("FAAAA") preempt all state law claims Plaintiff asserts against Empire. For
10 these reasons, the Court should dismiss the Complaint against Empire.

11 **I. RELEVANT ALLEGATIONS**

12 Plaintiff alleges that in May 2024, it purchased 131 e-bikes for \$75,000. (Doc.
13 2 ¶ 10.) Plaintiff stored the bikes at Defendant Kitzuma Corporation's ("Kitzuma")
14 warehouse in Asheville, NC. (*Id.*) Plaintiff arranged for the bikes to be transported in
15 interstate commerce from NC to CA by hiring freight broker Defendant GetCarrier,
16 LLC ("GetCarrier"), who was responsible for hiring a motor carrier to transport the
17 bikes. (Doc. 2, ¶ 12.) GetCarrier allegedly hired Defendant Speed Express, Inc.
18 ("Speed") as the motor carrier. (*Id.*) However, an unknown and unauthorized third
19 party "electronically intercepted" the shipment of bikes and rebooked it with Empire
20 to transport the shipment. (Doc. 2, ¶ 15.) Empire picked up the bikes from Kitzuma,
21 where Kitzuma generated a bill of lading (the shipping contract) and released the bikes
22 to Empire with the bill of lading signed by Kitzuma. (Doc. 2, ¶ 16; Exhibit A Page 19
23 of 19 Page ID# 22.) Plaintiff alleges that Kitzuma printed the wrong address on the
24 bill of lading, and as a result, Plaintiff never received the shipment of bikes from
25 Empire or any other motor carrier. (Doc. 2, ¶ 16; 18.) Plaintiff claims that the bikes
26 were stolen or converted in California. (*Id.*)

27 Plaintiff filed suit on August 22, 2024, seeking damages for the loss of the bikes
28 and other damages totaling \$350,000. (Doc. 2, ¶ 20.)

II. MOTION TO DISMISS LEGAL STANDARD

Dismissal of the entire Complaint against Empire is warranted because Plaintiff fails to state a claim on which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(b)(6) states that a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs. Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). On a motion to dismiss, a court may consider documents attached to the complaint, documents incorporated by reference in a complaint, or documents subject to judicial notice. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). “[A] written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Fed. R. Civ. P. 10(c).

To survive a Rule 12(b)(6) motion, a complaint must articulate “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 556). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

Courts are directed to accept as true all factual allegations in the complaint, however, the presumption of truth does not apply to conclusory allegations. *Iqbal*, 556 US at 680-81 (*italics added*). Another exception to this requirement exists when facts in the complaint are contradicted by facts established in an exhibit attached to that complaint which is properly incorporated by reference, such as a contract. See

1 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

2 **III. PLAINTIFF’S STATE LAW CLAIMS FALL UNDER THE CARMACK**
3 **AMENDMENT’S PREEMPTION, WARRANTING DISMISSAL**

4 Each of Plaintiff’s state law claims against Empire arise from Plaintiff’s
5 allegation that its cargo (the bikes) was lost or damaged during interstate transport
6 from North Carolina to California. (Doc. 2, ¶¶15, 16, 18, 20.) The Carmack
7 Amendment exclusively governs the interstate transportation of goods and preempts
8 any state law claims related to such transport. Under the Carmack Amendment,
9 Plaintiff’s sole remedy is limited to “actual loss or injury to the property” transported.
10 49 U.S.C. § 14706(a)(1). Since Plaintiff’s state law claims all arise from and relate to
11 the loss or damage to its cargo—the bikes—during interstate transportation, the
12 Carmack Amendment preempts all Plaintiff’s claims asserted against Empire in the
13 Complaint. Therefore, the Court should dismiss the Complaint, including Counts 1,
14 3-5, and Plaintiff’s claim for punitive damages against Empire.

15 **A. The Carmack Amendment is Part of a Comprehensive Scheme**
16 **Designed to Bring Uniform Treatment to the Carrier-Shipper**
17 **Relationship.**

18 The Carmack Amendment creates a “national scheme of carrier liability.” *Exel,*
19 *Inc. v. S. Refrigerated Transp., Inc.*, 807 F.3d 140, 148 (6th Cir. 2015). It provides
20 shippers with **a single cause of action** against carriers for loss sustained in connection
21 with the transit of property. 49 U.S.C. § 14706(a)(1). Further, it preempts all state law
22 claims on “the subject of the liability of the carrier.” *Adams Express Co. v. Croninger*,
23 226 U.S. 491, 505-06 (1913) (stating that the Carmack Amendment “embraces the
24 subject of the liability of the carrier” so completely that it “supersede[s] all state
25 regulation with reference to it.”) Under the Carmack Amendment, a shipper may
26 recover for the actual losses resulting from the loss of or damage to property caused
27 by an interstate carrier involved in the shipment. 49 U.S.C. § 14706. The Carmack
28 Amendment provides, in relevant part, as follows:

1 A carrier providing transportation or service . . . shall issue a receipt or
2 bill of lading for property it receives under this part. That carrier . . . [is]
3 ***The liability imposed under this paragraph is for the actual loss or***
4 ***injury to the property*** Failure to issue a receipt or bill of lading does
not affect the liability of a carrier.

5 49 U.S.C. § 14706(a)(1) (emphasis added).

6 Within a few years of the Carmack Amendment’s passage, the United States
7 Supreme Court addressed its dual goals of uniformity and preemptive scope. In the
8 seminal case of *Adams Express*, 226 U.S. at 505-06, the Supreme Court defined
9 Carmack Amendment preemption in the broadest terms:

10 Almost every detail of the subject is covered so completely that there can
11 be no rational doubt but that Congress intended to take possession of the
12 subject, and supersede all state regulation with reference to it. . . But
when Congress acted in such a way as to manifest a purpose to exercise
its conceded authority, the regulating power of the state ceased to exist.

13 *Adams Express* held that claims arising out of loss or damage to property
14 transported in interstate commerce are governed exclusively by the Carmack
15 Amendment and that all state and common law claims are preempted. The Court
16 explained that the primary objective of the statute is the establishment of a uniform
17 national policy governing liability of interstate carriers:

18 [T]his branch of interstate commerce was being subjected to such a
19 diversity of legislative and judicial holding that it was practically
20 impossible for a shipper engaged in a business that extended beyond the
21 confines of his own state, or a carrier whose lines were extensive, to
22 know, without considerable investigation and trouble, and even then
oftentimes with but little certainty, what would be the carrier’s actual
responsibility as to goods delivered to it for transportation from one state
to another. The congressional action has made an end to this diversity....

23 *Id.* at 505.

24 Each succeeding Supreme Court decision interpreting the scope of the Carmack
25 Amendment has repeated the principles enunciated in *Adams Express*—
26 comprehensiveness of application and uniformity of treatment regardless of state
27 laws. *See, e.g., New York, N. H. & H. R. Co. v. Nothnagle*, 346 U.S. 128, 131 (1953)
28 (“With the enactment in 1906 of the Carmack Amendment, Congress superseded

1 diverse state laws with a nationally uniform policy governing interstate carriers’
2 liability for property loss”); *Atchison, T. & S. F. R. Co. v. Harold*, 241 U.S. 371, 378
3 (1916) (“it is not disputable that what is known as the Carmack Amendment . . . was
4 an assertion of the power of Congress over the subject of interstate shipments, the
5 duty to issue bills of lading and the responsibilities thereunder, which in the nature of
6 things excluded state action”); *Charleston & W. Carolina Ry. Co. v. Varnville*
7 *Furniture Co.*, 237 U.S. 597, 604 (1915) (even state-law claims that supplement the
8 Carmack Amendment are preempted.)

9 All Circuit Courts of Appeal, including the Ninth Circuit, have held that the
10 Carmack Amendment’s broad scope preempts all state law claims, whether they
11 contradict or supplement remedies under the Carmack Amendment. *White v.*
12 *Mayflower Transit, LLC*, 543 F.3d 581, 584 (9th Cir. 2008) (“the Carmack
13 Amendment . . . **provides the exclusive cause of action for interstate shipping**
14 **contract claims, and it completely preempts state law claims alleging delay, loss,**
15 **failure to deliver and damage to property.**”) (emphasis added); *Rini v. United Van*
16 *Lines*, 104 F.3d 502, 506 (1st Cir. 1997) (“[A]ll state laws that impose liability on
17 carriers based on the loss or damage of shipped goods are preempted”); *Cleveland v.*
18 *Beltman N. Am. Co.*, 30 F.3d 373, 379 (2d Cir. 1994) (Carmack Amendment preempts
19 federal common law claims); *Certain Underwriters at Interest at Lloyd’s of London*
20 *v. UPS of Am., Inc.*, 762 F.3d 332 (3d Cir. 2014) (holding that “the Carmack
21 Amendment preempts all state law claims for compensation for the loss of or damage
22 to goods shipped by a ground carrier in interstate commerce”); *Rush Indus. v. MWP*
23 *Contractors, LLC*, 539 F. App’x 91, 95 (4th Cir. 2013) (Carmack Amendment
24 “preempts all state or common law claims available to a shipper against a carrier for
25 loss or damage associated with interstate shipment”); *Heniff Transp. Sys., L.L.C. v.*
26 *Trimac Transp. Servs.*, 847 F.3d 187, 190 (5th Cir. 2017) (“**The Amendment**
27 **provides the exclusive cause of action for loss or damages to goods arising from**
28 **the interstate transportation of those goods by a common carrier**”) (emphasis

1 added); *W. D. Lawson & Co. v. Penn Cent. Co.*, 456 F.2d 419, 421 (6th Cir. 1972)
2 (“As to the . . . issue . . . [of] whether or not the Carmack Amendment preempted
3 common law suits . . . we hold that it did.”); *Hughes v. United Van Lines, Inc.*, 829 F.
4 2d 1407, 1415 (7th Cir. 1987) (“[We] hold that the remedy provision of the Carmack
5 Amendment preempts all state and common law remedies inconsistent with the
6 Interstate Commerce Act”); *Hopper Furs, Inc. v. Emery Air Freight Corp.*, 749 F.2d
7 1261, 1264 (8th Cir. 1985) (“All actions against a common carrier, whether
8 designated as **tort** or contract actions, are governed by the federal statute [the
9 Carmack Amendment]”) (emphasis added); *White v. Mayflower Transit, LLC*, 543
10 F.3d 581, 584 (9th Cir. 2008) (“The Carmack Amendment is a federal statute that
11 **provides an exclusive cause of action for interstate shipping contract claims**, and
12 it completely preempts state law claims alleging delay, **loss, failure to deliver** and
13 damage to property.”); *Underwriters at Lloyds of London v. North American Van*
14 *Lines*, 890 F.2d 1112, 1121 (10th Cir. 1989) (“[W]e now hold that the Carmack
15 Amendment preempts state common law remedies . . . for **negligent** loss or damage
16 to goods shipped under a lawful bill of lading.”) (emphasis added); *Skanes v. FedEx*,
17 734 F. App’x 671, 673 (11th Cir. 2018) (emphasis added) (“The pre-emptive effect
18 of the Carmack Amendment is broad and embraces all losses resulting from any
19 failure to discharge a carrier’s duty as to any part of the agreed transportation”) (emphasis added)

21 The United States District Court for the Central District of California also
22 follows the Circuit Courts by holding that the Carmack Amendment preempts state
23 law claims against a carrier arising from the interstate transportation of property. *Hall*
24 *v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 688-90 (9th Cir. 2007) (It is well settled that
25 the Carmack Amendment is the exclusive cause of action for interstate-shipping
26 contract claims alleging loss or damage to property, including claims for breach of
27 contract **and conversion**); *Steiner v. Horizon Moving Sys.*, 568 F. Supp. 2d 1084,
28 1087 (C.D. Cal. 2008) (“[t]he Carmack Amendment provides the exclusive claim for

1 damages arising out of an interstate shipping contract, and the statute completely
2 preempts a state law contract claim for recovery of such damages.”) (emphasis
3 added); *Nyk Line (n. Am.) v. Burlington N. & Santa Fe Ry. Co.*, 222 F. Supp. 2d 1176,
4 1179 (C.D. Cal. 2002) (All state law causes of action, which **negligence** and breach
5 of contract are, are absolutely preempted by the Carmack Amendment.)

6 **B. “Transportation” is Broadly Defined.**

7 The Carmack Amendment is “comprehensive enough to embrace responsibility
8 for all losses resulting from any failure to discharge a carrier’s duty as to any part of
9 the agreed transportation . . .” *Georgia, Florida & Alabama Ry. Co. v. Blish Milling*
10 *Co.*, 241 U.S. 190, 196 (1916). Following this extremely broad definition of
11 transportation, Circuit Courts across the country have held that the scope of the
12 Carmack Amendment’s preemption encompasses not only the actual transport
13 activities, but also all other acts of the motor carrier in connection with the interstate
14 transport, stating:

15 Courts of Appeals from the First, Second, Fourth, Fifth, Sixth, Seventh,
16 Eighth, Ninth, Tenth, and Eleventh Circuits have consistently held that
17 **the Carmack Amendment is the “exclusive cause of action for**
18 **interstate-shipping contract [and tort] claims alleging loss or**
19 **damage to property.** *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 688-
20 90 (9th Cir. 2007); accord *REI Transport, Inc. v. C.H. Robinson*
21 *Worldwide, Inc.*, 519 F.3d 693, 697-98 (7th Cir. 2008) (emphasis added.)

22 *Certain Underwriter*, 762 F.3d at 336 (emphasis added).

23 Specifically, the express definition of “transportation” under the Carmack
24 Amendment is extremely broad and includes:

25 [S]ervices related to that movement, including arranging for, receipt,
26 delivery, elevation, transfer in transit, refrigeration, icing, ventilation,
27 storage, handling, packing, unpacking, and interchange of passengers
28 and property.

29 *See* 49 U.S.C. § 13102 (23)(B); *see also Thornton v. Philpot Relocation Systems*,
30 Docket No. 3:09-CV-329, 2012 U.S. Dist. LEXIS 6696, at *9 (E.D. Tenn. Jan. 20,
31 2012) (“The provisions of the Carmack Amendment supersede all the regulations and
32 policies of a particular state and govern exclusively in determining the liability of a

1 carrier transporting freight (including household goods) in interstate commerce. No
2 state law can be applied in determining the scope of liability of an interstate motor
3 carrier under the Carmack Amendment.” citing *Adams Express*, 226 U.S. at 505);
4 *EMCO Corp. v. Miller Transfer & Rigging Co.*, No. 22-3376, 2023 U.S. App. LEXIS
5 2553, at *6 (6th Cir. Jan. 31, 2023) (Carmack defines “transportation” broadly, and
6 therefore encompasses damage to any cargo during the physical movement of the
7 cargo as well as “services related to th[e] movement” and packing of the cargo);
8 *Intech Inc. v. Consolidated Freightways*, 836 F.2d 672, 677 (1st Cir. 1987); *Rini*, 104
9 F.3d 502; *see also PNH Corp. v. Hullquist Corp.*, 843 F. 2d 586, 590 (1st Cir. 1988)
10 (transportation includes all “services incident to carriage and delivery”); *Air Liquide*
11 *Mex. S. De R.L. De C.V. v. Willie*, No. H-14-211, 2015 U.S. Dist. LEXIS 196067, at
12 *9 (S.D. Tex. Feb. 18, 2015) (the Carmack Amendment’s broad definition of
13 “transportation” includes services related to that movement, including arranging for,
14 receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage,
15 handling, packing, unpacking, and interchange of passengers and property); *Pietro*
16 *Culotta Grapes, Ltd. v. Southern Pac. Transp. Co.*, 917 F. Supp. 713, 715-16 (E.D.
17 Cal. 1996) (finding transportation as defined in the Carmack Amendment is
18 interpreted broadly, encompassing pre-shipment misrepresentations concerning
19 delivery deadlines.).

20 As such, Plaintiff’s entire Complaint, including all four state law claims
21 asserted against Empire—negligence, quantum meruit, unjust enrichment, and
22 conversion—all arise out of and are related to the interstate transportation of
23 Plaintiff’s goods and, thus, all state law claims against Empire are preempted. Further,
24 Plaintiff’s claim for punitive damages is also preempted and should be dismissed with
25 prejudice.

26 **C. The Carmack Amendment Preempts All Plaintiff’s State Law**
27 **Claims.**

28 1. *Theft of cargo/goods qualifies as a “loss” as under the Carmack*

1 *Amendment.*

2 Cargo or goods stolen or converted during an interstate shipment does not
3 preclude the application of the Carmack Amendment. Theft of an interstate shipment
4 constitutes a “loss” under the Carmack Amendment. Therefore, the Carmack
5 Amendment serves as the shipper’s exclusive remedy for such a loss. *Mobile Traders,*
6 *Inc. v. FedEx Freight, Inc.*, 692 F. Supp. 3d 1252, 1255 (S.D. Fla. 2023).

7 In *Mobile Traders, Inc. v. FedEx Freight, Inc.*, shipper plaintiff arranged for
8 cellular devices to be shipped from Texas to Florida with FedEx as the carrier. When
9 the shipment arrived in Florida it was discovered that the shipment had been tampered
10 with and approximately half of the devices were allegedly stolen. *Mobile Traders,*
11 *Inc.* 692 F. Supp. 3d 1252, 1254. Plaintiff sued FedEx asserting various Florida state
12 law claims. FedEx moved to dismiss arguing the Carmack Amendment preempted the
13 plaintiff’s state law claims. The Court held, that the theft of the devices fell under the
14 ambit of the Carmack Amendment and the plaintiff’s state law claims were preempted
15 and properly dismissed. *Id.* at 1255. Furthermore, plaintiff’s claim of civil theft
16 against FedEx was held to be a cause of action that was preempted because theft was
17 not “conduct separate and distinct from the delivery, loss of, or damage to goods.” *Id.*
18 at 1257.

19 Similarly, here, Plaintiff claims that Empire, along with the other Defendants,
20 engaged in “unlawful acts...[that] caused or contributed to the unlawful taking and
21 depriving Plaintiff of his property...which constitutes the unlawful act of
22 Conversion.” (Doc. 2, ¶40.) Because Plaintiff alleges that the bikes were lost (which
23 includes theft or conversion) during an interstate shipment, the Carmack Amendment
24 governs this case.

25 2. *Count 1 – Negligence is preempted by the Carmack Amendment.*

26 In Count 1, Plaintiff alleges that Defendants breached their duty of care, which
27 caused and/or contributed to the conversion or theft of Plaintiff’s bikes. (Doc. 2, ¶
28 19.) Plaintiff further claims that Defendants’ unlawful actions directly resulted in

1 damages suffered by Plaintiff. (Doc. 2, ¶ 20.)

2 Plaintiff's negligence claim is preempted by the Carmack Amendment. *Hall*,
3 476 F.3d at 689 (dismissing common law negligence claim against a carrier as
4 preempted by the Carmack Amendment); *Hughes Aircraft Co. v. N. Am. Van Lines*,
5 *Inc.*, 970 F.2d 609, 613 (9th Cir. 1992) (concluding that the Carmack
6 Amendment required the dismissal of a common law negligence claim against a
7 carrier); *Sony Biotechnology, Inc. v. Chipman Logistics & Relocation*, No. 17-CV-
8 1292-AJB-WVG, 2017 U.S. Dist. LEXIS 134440, at *8 (S.D. Cal. Aug. 22, 2017)
9 (dismissing state law claim for negligence as preempted by the Carmack
10 Amendment.)

11 Based on Plaintiff's allegations and the foregoing authorities, the Court should
12 dismiss Count 1 because the Carmack Amendment. Preempts a claim for negligence.

13 3. *Counts 3 & 4 – quantum meruit and unjust enrichment are*
14 *preempted by the Carmack Amendment.*

15 Plaintiff's claims for quantum meruit and unjust enrichment, which are based
16 on state law, are preempted by the Carmack Amendment and therefore must be
17 dismissed. These claims simply aim to recover compensation for the loss of Plaintiff's
18 bikes during interstate transport. *Shemes v. United States Moving Serv. LLC*, 2023
19 U.S. Dist. LEXIS 176910, *15 ("the Carmack Amendment preempts Plaintiffs'
20 negligence, **unjust enrichment**, fraud, Kansas Consumer Protection Act, and
21 California Consumer Legal Remedies Act claims. . . .") (emphasis added); *Asmis v.*
22 *Phila. Truck Lines, Inc.*, 2021 U.S. Dist. LEXIS 70721, *7 (Plaintiff's state law
23 claims, including **unjust enrichment** dismissed as preempted by Carmack.); *Spray-*
24 *Tek, Inc. v. Robbins Motor Transp., Inc.*, 426 F. Supp. 2d 875, 887 (West. Dist. WI,
25 2006) (plaintiff's common law claims for **unjust enrichment** and promissory
26 estoppel were dismissed as preempted by the Carmack Amendment); *La. Transp. v.*
27 *Cowan Sys., LLC*, 2012 U.S. Dist. LEXIS 66294, *11-12 ("Plaintiff's state law claims
28 for... **quantum meruit** [is] covered under the scope of the Carmack Amendment")

1 and preempted.”) (emphasis added); *Harang v. Delta Moving Servs.*, No. H-10-1953,
2 2011 U.S. Dist. LEXIS 29888, at *9 (S.D. Tex. Mar. 23, 2011) (Motion to dismiss
3 was granted holding that the Carmack Amendment preempted claims of **unjust**
4 **enrichment, quantum meruit**, and deceptive trade practices.”).

5 Like above, Counts 3 and 4 should be dismissed because they are preempted
6 by the Carmack Amendment.

7 4. *Count 5 – Conversion is preempted by the Carmack Amendment.*

8 Lastly, Plaintiffs final claim for conversion is preempted by the Carmack
9 Amendment and should be dismissed. *See White v. Mayflower Transit, L.L.C.*, 543
10 F.3d 581, 584 (9th Cir. 2008) (“The Carmack Amendment constitutes a complete
11 defense to common law claims against interstate carriers for negligence, fraud and
12 **conversion**[.]”); *Hall*, 476 F.3d at 689 (“It is well settled that the Carmack
13 Amendment constitutes a complete defense to common law claims alleging all
14 manner of harms...” (emphasis added)); *Bormaster v. Express Shipping Ctr., Inc.*,
15 No. 96-17197, 1999 U.S. App. LEXIS 11051, at *5-6 (9th Cir. May 26, 1999)
16 (quoting *Hughes Aircraft Co. v. North American Van Lines*, 970 F.2d at 613))
17 (“Federal law preempts any state common law action against North American acting
18 solely as a common carrier. It is clear that the Carmack Amendment established a
19 uniform national liability policy for interstate carriers[.]”): *see also Ledet v. Across*
20 *USA, Inc.*, 2024 U.S. Dist. LEXIS 88241, *15 (“Plaintiffs’ claims for **conversion** and
21 exemplary or **punitive damages** are preempted by the Carmack Amendment.”)
22 (emphasis added.); *See e.g., Certain Underwriters*, 2014 AMC at 2278-79, 762 F.3d
23 at 335 (holding that claims for “breach of contract, negligence, [and] **conversion**” are
24 preempted by the Carmack Amendment) (emphasis added); *Usinor Steel Corp.* 308
25 F. Supp. 2d at 518 (finding that the Carmack Amendment preempts “claims for breach
26 of contract, negligence, breach of bailment and **conversion**.”).

27 Separately, Plaintiff alleges entitlement to punitive damages for this alleged
28 tort. Consequently, the Carmack Amendment preempts Plaintiff’s claim for punitive

1 damages See *Ledet v. Across USA, Inc.*, 2024 U.S. Dist. LEXIS 88241, *15
2 (“Plaintiffs’ claims for **conversion** and exemplary or **punitive damages** are
3 preempted by the Carmack Amendment.”) (emphasis added.); *Coughlin v. United*
4 *Van Lines, LLC*, No. CV 0410576 R, 2005 U.S. Dist. LEXIS 51065, at *7 (C.D. Cal.
5 June 22, 2005) (“this Court hereby grants United’s Motion to Dismiss the...fifth
6 (“punitive damages”)...causes of action contained in Plaintiff’s First Amended
7 Complaint” as preempted by the Carmack Amendment.)

8 Therefore, the court should dismiss Plaintiff’s allegations of conversion and
9 claim for punitive damages as preempted by the Carmack Amendment.

10 **IV. PLAINTIFF’S STATE LAW CLAIMS PLED IN CAUSES OF ACTION**
11 **1, 3-5 ARE ALSO PREEMPTED BY FAAAA**

12 In addition to being preempted by the Carmack Amendment, all Plaintiff’s state
13 law claims (negligence, quantum meruit, unjust enrichment, conversion and punitive
14 damages) are preempted by the Federal Aviation Administration Authorization Act
15 (“FAAAA”), 49 U.S.C. § 14501(c)(1). Specifically, FAAAA prohibits state law
16 claims “related to a price, route, or service of any motor carrier...or any motor private
17 carrier, broker, or freight forwarder with respect to the transportation of property.” 49
18 U.S.C. § 14501(c)(1). Congress based Section 14501(c)(1) on virtually identical
19 language to the Airline Deregulation Act (“ADA”), which also broadly preempts all
20 state law claims “related to a price, route, or service of any carrier... with respect to
21 property.” 49 U.S.C. § 41713(b)(4)(A). *Rowe v. New Hampshire Motor Transport*
22 *Assn.*, 552 U.S. 363, 367-68 (2008) (holding that the scope of FAAAA preemption is
23 as broad as ADA preemption); *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 226-
24 35 (1995) (determining that ADA preempts state consumer fraud remedies); *Morales*
25 *v. Trans World Airlines*, 504 U.S. 374 (1992) (finding that Congress intended ADA
26 preemption to be very broad due in large part to the “relating to” phrase). Following
27 these Supreme Court precedents, federal courts have determined that FAAAA
28

1 preempts state law claims when they “relate to” a motor carrier, broker, or freight
2 forwarder’s services.

3 Here, all Plaintiff’s state law claims allege loss of goods arising from or during
4 interstate transport, which directly relates to Empire’s “services” within the meaning
5 of 49 U.S.C. § 14501(c)(1). As such, it is well-settled law that all Plaintiff’s claims
6 alleged against Empire are also preempted by FAAAA. *See AMG Res. Corp. v.*
7 *Wooster Motor Ways, Inc.*, Civ. No. 15-3716, 2019 U.S. Dist. LEXIS 6747, 2019 WL
8 192900, at *4 (D.N.J. Jan. 14, 2019) (holding that claims for **conversion**, breach of
9 the covenant of good faith and fair dealing, **negligence**, violation of the New Jersey
10 Consumer Fraud Act, and **unjust enrichment** arising from the non-delivery of a
11 shipment of copper were preempted by the FAAAA), *aff’d*, 796 F. App’x 96 (3d Cir.
12 2020); *Fed. Ins. Co. v. Nolan Transp. Grp., Inc.*, No. 1:15-CV-00344-CC, 2016 U.S.
13 Dist. LEXIS 187727, 2016 WL 9000042, at *3 (N.D. Ga. Oct. 12, 2016) (“[T]he Court
14 finds that Plaintiff’s **negligence** claim falls squarely within the scope of [Section
15 14501(c)(1)] and is due to be dismissed with prejudice.”); *Thermal Techs., Inc. v.*
16 *United Parcel Serv., Inc.*, No. 08-CV-102-GKF-FHM, 2008 U.S. Dist. LEXIS 90243,
17 2008 WL 4838681, at *9 (N.D. Okla. Nov. 5, 2008) (dismissing **unjust enrichment**
18 claim because it is preempted by the FAAAA); *Yellow Transp., Inc. v. DM Transp.*
19 *Mgmt. Servs., Inc.*, No. 06DCV1517-LDD, 2006 U.S. Dist. LEXIS 51231, 2006 WL
20 2871745, at *4 (E.D. Pa. July 14, 2006) (dismissing claims for **unjust enrichment**,
21 **quantum meruit**, and fraud because such claims are preempted by the FAAAA, but
22 breach of contract claim survives); *All World Prof’l Travel Servs., Inc. v. Am. Airlines,*
23 *Inc.*, 282 F.Supp.2d 1161, 1169 (C.D. Cal. 2003) (finding that claims for **unjust**
24 **enrichment** and declaratory and injunctive relief are preempted if the claims relate to
25 prices or services). *Vieira v. United Parcel Service, Inc.*, 1996 WL 478686 (N.D. Cal.
26 1996) (court held that FAAAA preempted plaintiff’s state law **negligence** and
27 **conversion** claims against a parcel delivery company that allegedly had failed to
28 deliver a package.); *Deerskin Trading Post v. UPS of Am.*, 972 F. Supp. 665, 673

1 (N.D. Ga. 1997) (Plaintiff's claims for punitive damages and injunctive relief are also
2 preempted by the FAAAA.); *Travel All Over the World, Inc. v. Kingdom of Saudi*
3 *Arabia*, 73 F.3d 1423, 1432 n.8 (7th Cir. 1996) (holding that the FAAAA preempts
4 state law **punitive damages** because they represent an enlargement or enhancement
5 of the parties' bargain).

6 Here, Plaintiff's state law claims for alleged damages (loss of cargo or goods)
7 arising from the interstate transit directly relate to Empire's "services" within the
8 meaning of Section 14501(c)(1). Plaintiff's Complaint includes several allegations
9 concerning Empire's services and role as the motor carrier that transported the bikes:

- 10 • "[The] shipment was picked up by the Driver for EMPIRE NATIONAL
11 INC. from KITZUMA Warehouse." (Doc 2. ¶ 16)
- 12 • "KITZUMA released the shipment of 131 bikes to the EMPIRE
13 NATIONAL INC." (*Id.*)
- 14 • "Plaintiff never received the shipment of the 131 bikes by EMPIRE
15 NATIONAL INC." (*Id.* at ¶18.)
- 16 • "Defendants . . . unlawful conduct caused or contributed to the theft of
17 131 bikes while being transported to Plaintiff and converted in transit."
18 (*Id.* at ¶ 30.)
- 19 • "As a result of the unfair and tortuous acts of Defendants...Plaintiff has
20 been deprived of its ability to optimize his investment...directly the
21 result of Bike Shipment Theft." (*Id.* ¶ 34.)

22 Because each of these allegations refers to Empire's services as a motor carrier,
23 the FAAAA statute's preemption provisions justify the dismissal of Counts 1, 3-5 as
24 pled against Empire.

25 CONCLUSION

26 For the foregoing reasons, Empire requests the Court dismiss the Complaint in
27 its entirety because the Carmack Amendment and FAAAA preempts all Plaintiff's
28 state law claims.

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DATED: October 18, 2024

HUSCH BLACKWELL LLP

By: /s/ Andrew B. Kleiner
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National, Inc.*

Certificate of Compliance

The undersigned, counsel of record for Defendant Empire National, Inc., certifies that this brief contains 4683 words, which complies with the type-volume limitation of L.R. 11-6.1.

DATED: October 18, 2024

HUSCH BLACKWELL LLP

By: /s/ Andrew B. Kleiner
ANDREW B. KLEINER

1 I hereby certify that on the 18th day of October 2024, I electronically filed:

2 **DEFENDANT EMPIRE NATIONAL, LLC'S MEMORANDUM OF**
3 **POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS**
4 **THE COMPLAINT PURSUANT TO RULE 12(B)(6)** with the Clerk of the
Court using the ECF system.

5 The ECF system will send notification of such filing to:

6 Richard L. Grant, Esq.
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10
11 /s/ Andrew B. Kleiner

12 ANDREW B. KLEINER
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